



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2004

Ms. Moira Parro
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2004-3810

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 201259.

The Southwest Institute of Forensic Sciences (the "institute") received a request for "any and all performance audits of all your criminal forensic divisions of your office - excluding medical examiners - since 1997 - and the number [and] type of cases processed and for which agency." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's representative. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note that you seek our opinion as to whether the submitted "Inspection Report" is responsive to the instant request for information. This office has stated that a governmental body has a good faith duty to relate a request to that information which it holds. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Moreover, a hypertechnical reading of a request for information does not effectuate the overall legislative intent of the Act. Therefore, based upon our review of the written request for information and the document in question, we conclude it is responsive to the instant request. As you raise no exceptions to disclosure for this information, we conclude it must be released to the requestor.

We next note that the remainder of the submitted information is made expressly public by section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You raise section 552.108 of the Government Code as an exception to required public disclosure. However, you have presented no arguments under this section. Therefore, we presume you have withdrawn any argument under section 552.108. *See* Gov't Code §§ 552.301, .302. However, because you present arguments claiming that the information is excepted by section 552.101 of the Government Code, we address your argument under that section.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. You claim that the information at issue is excepted from disclosure by section 552.101 in conjunction with the privilege of “self-critical analysis.” You cite *Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970), *aff'd*, 479 F.2d 920 (D.C. Cir. 1973), in support of your position. *Bredice* addressed the qualified discovery privilege, under federal law, granted for hospital committee staff meetings. This office has determined, however, that discovery privileges generally do not make information confidential by law. *See, e.g.*, Open Records Decision Nos. 575 (1990), 574 (1990) (attorney work-product not protected as information deemed confidential by law under statutory predecessor to section 552.101). We note that although the court in *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001), found that the Texas Rules of Evidence and Texas Rules of Civil Procedure are other law for purposes of section 552.022, we conclude the federal discovery privilege at issue in this case is not encompassed by the *Georgetown* ruling, and therefore, does not equal “other law” for purposes of section 552.022. You have pointed to no other exception under the Act and no “other law” that makes the information at issue confidential. Therefore, you must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is written in a cursive, flowing style.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 201259

Enc: Submitted documents

c: Mr. Joseph R. Larsen
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(w/o enclosures)